FOO BAN NYEN

v.

FOO YET KAI & SONS SDN. BHD. & ORS.

HIGH COURT MALAYA, IPOH
ABDUL MALEK AHMAD J
[ORIGINATING SUMMONS NO. 26-5-90]
3 MAY 1991

COMPANY LAW: *Petitioner shareholder - Action for oppression - Against third parties - Whether consent of company needed - Leave - Locus standi - Disposal of relevant issues - Companies Act 1965, s. 181.*

The petitioner F who was a shareholder of the 1st respondent R1 filed a petition against all 7 respondents R1 to R7 under s. 181 of the Companies Act 1965 (the Act) for alleged oppressive conduct.

F contended that he had to join R6 and R7 as parties as they were involved in transactions which were oppressive and because R1 would not do so as the same parties were controlling all 3 companies.

R6 and R7 applied to be struck out and their Counsel contended that his clients were 3rd parties who were not members of R1 and that F was not a shareholder of his clients; therefore he argued that F had no *locus standi* to sue R6 and R7 and that a derivative action should have been brought against his clients.

It is not disputed that R2, R3, R4 and R5 controlled R1, R6 and R7.

Held:

[1] Under s. 181 of the Act on which the petition is based, there is no right to bring a derivative action.

[2] The fact that R6 and R7 were relevant parties to the oppression complained of had not been seriously disputed.

[3] Taking into account the fact that R6 and R7's application was filed one year after F's petition and in the light of O. 15 r. 6 and 16 of the RHC 1980 and s. 181 of the Act, R6 and R7 were allowed to remain as parties so that all the issues affecting the relevant parties could be disposed of at one hearing.

[Order accordingly.]

Legislation referred to:
Companies Act 1965, s. 181
Rules of the High Court 1980, O. 15, rr. 6, 16

For the Petitioner - K. Anantham (Logan B. Sabapathy with him); M/s Skrine & Co.
For the first, second, third & fifth respondents - W.S.W. Davidson (Wan Koon Ming with him); M/s. Azman, Davidson & Co.
For the fourth Respondent - Leslie Yap (Albert Tan Boon Huat with him); M/s. Yeap & Yeap
For the sixth and seventh Respondents - Chan Kok Keong; M/s. Chan & Associates

JUDGMENT

Abdul Malek Ahmad J:

The sixth and seventh respondents had applied to be struck out as parties to this petition. Both had applied separately but their applications had been heard together and both had stated the same grounds which are that the petitioner as a shareholder of the first respondent had filed the petition against them without the consent of the first respondent.

In his submission, Encik Chan Kok Keong for the sixth and seventh respondents had pointed out that his clients were third parties and not members of the first respondent and the petitioner was not a shareholder of his clients. He added that there was non provision under the law for such a step to be taken and leave was therefore necessary. In the circumstances, he argued that the petitioner had no *locus standi* to sue the sixth and seventh respondents.

Encik Anantham for the petitioner had replied that he was proceeding under s. 181 of the Companies Act 1965 (hereinafter "the Act") which is a provision unique in itself and English authorities were therefore irrelevant. He went on to say that although in essence the petition was against the first respondent, the petitioner had to make the sixth and seventh respondents parties as they were involved in the relevant transaction. The sixth respondent, he said, was not doing well and owed money to the first respondent and shares had been priced arbitrarily to wipe out the sixth respondent's indebtedness to the first respondent. On the other hand, he stated that the seventh respondent was doing very well and their shares had been allotted to the second, third, fourth and fifth respondents who controlled the first, sixth and seventh respondents. Learned Counsel concluded that although the petitioner was not a shareholder of the sixth and seventh respondents, he had to add them as parties in the circumstances as the first respondent would not do so as the same parties were controlling all three companies.

A number of authorities had been cited but they are not actually on point relevant to the issue at hand. Learned Counsel for the sixth and seventh respondents had argued that a derivative action should have been brought against his clients but it is clear that this statutory right is absent from s. 181 of the Act on which this petition is based. It is also not in dispute that the second, third, fourth and fifth respondents are in control of the first, sixth and seventh respondents. Further, the petitioner's affidavits have overwhelmingly emphasised the fact that the sixth and seventh respondents are relevant parties to the oppression complained of and this has not in fact been seriously disputed. It must also be observed that the applications had been filed on year later in November 1990 after the petition had been originally filed in Kuala Lumpur in November 1989 and had been subsequently transferred to Ipoh on 19 June 1990. In these circumstances, and in the light of O. 15 rr. 6 and 16 of the Rules of the High Court 1980 and s. 181 of the Act, I am more inclined to allow the sixth and seventh respondents to remain as parties so that all the issues affecting the relevant parties could be disposed of at one hearing.

Also found at [1991] 2 CLJ 1364